

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THERON AND LINDA RUST,
Plaintiffs,
v.
BITTNER & HAHS, PC AND,
COLUMBIA RECOVERY GROUP,
LLC,
Defendants. } NO. CV-11-3057-LRS
} ORDER GRANTING
} MOTION TO AMEND

BEFORE THE COURT are the following motions: Defendant Bittner & Hahs, PC’s (“Defendant”) Motion To Dismiss For Failure to State a Claim (ECF No. 5); and Plaintiffs’ Motion for Leave to File Amended Complaint (ECF No. 9). These motions were noted without oral argument.

A. Defendants' Motion to Dismiss

On May 18, 2011, Plaintiffs filed a complaint in the United States District Court for the Eastern District of Washington seeking relief under the FDCPA. Plaintiffs allege two counts of violations of the FDCPA. (See Complaint Counts I and II.)

Defendants argue that assuming Plaintiffs' parenthetical reference to 15 U.S.C. §§1692e(2)(A), 1692e(10), 1692f, 1692f(1), and 1692i(a)(2) is sufficient to give Defendants fair notice of the nature of Plaintiffs' claims, Plaintiffs nevertheless fail to state a claim for which relief can be granted because they fail to allege facts from which the Court can infer they will be able to establish the

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1 foundational elements of each of these claims.

2 Plaintiffs did not respond to Defendants' motion to dismiss but instead filed
3 a motion for leave to amend their complaint.

4 B. Plaintiffs' Motion for Leave to Amend Complaint

5 Plaintiffs seek leave to amend their complaint in order to (i) clarify factual
6 circumstances previously pleaded, (ii) expound upon legal theories previously
7 delineated, and (iii) ensure that Defendants are provided with fair notice of the
8 claims being asserted against them. Plaintiffs argue that the allegations included
9 in their proposed amended complaint will serve to ensure that Plaintiffs' rights are
10 fully adjudicated on the merits.

11 Defendant responds that amendment of the complaint would needlessly
12 prolong litigation. Defendant further argues that Plaintiffs cannot make a prima
13 facie showing that the corporate lease was a "debt" as defined by the FDCPA, and
14 therefore cannot establish any of their claims. Even if Plaintiffs were to establish
15 the lease created a "debt" and satisfy the Court that their claims are not barred,
16 Plaintiffs cannot make a prima facie showing as to all the elements of Counts I
17 through IV of the proposed Amended Complaint. Finally, Defendant argues that
18 Counts I through III are barred by the *Rooker-Feldman* doctrine and collateral
19 estoppel. Therefore, Defendant concludes, Plaintiffs' cannot be saved by
20 amendment and leave to amend should be denied.

21 Plaintiffs reply that Fed. R. Civ. P. 15(a) allows for liberal amendment of
22 pleadings and contrary to what Defendant argues, their alleged obligation is a
23 "debt" as defined by the FDCPA. Further, Plaintiffs' claims are not barred by the
24 *Rooker-Feldman* doctrine because Plaintiffs are not claiming injury caused by the

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1 state court judgment,¹ but rather for an injury caused by Defendants' debt
 2 collection efforts. Finally, Plaintiffs assert, their claims are not barred by collateral
 3 estoppel because the issue of whether the underlying debt is valid has nothing to
 4 do with whether Defendants used unfair methods to collect that debt.

5 Plaintiffs, in the proposed Amended Complaint, have voluntarily withdrawn
 6 their FDCPA claim pursuant to section 1692(e)(2)(A). As to all other claims,
 7 Plaintiffs argue that their allegations, accepted as true at this stage, and all
 8 reasonable inferences therefrom, sufficiently state causes of action for violations
 9 of the FDCPA .

10 C. Legal Standards

11 "Under the Federal Rules of Civil Procedure, leave to amend should be
 12 freely granted when justice so requires." *M/V American Queen v. San Diego*
13 Marine Constr. Corp., 708 F.2d 1483, 1492 (9th Cir.1983). "This strong policy
 14 toward permitting the amendment of pleadings, however, must be tempered with
 15 considerations of 'undue delay, bad faith or dilatory motive on the part of the
 16 movant, repeated failure to cure deficiencies by amendments previously allowed,
 17 undue prejudice to the opposing party by virtue of allowance of the amendment,
 18 futility of amendment, etc.'" *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230,
 19 9 L.Ed.2d 222 (1962).

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21 ¹ On or about August 4, 2010, Defendant B&H, itself and on behalf of
 22 Defendant CRG, commenced legal action against Plaintiffs in the Circuit
 23 Court for the State of Oregon, County of Washington, civil action number
 24 C105130CV (the "state court action"). The dispute was subject to
 25 mandatory arbitration, which took place on March 9, 2010. Following
 26 arbitration, Columbia Recovery Group, LLC was awarded the full amount
 27 owing on the Lease (\$3,741.78), plus attorney fees and costs.

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The Court finds that at this stage in the proceedings, and finding no undue delay, bad faith or dilatory motive on the part of the Plaintiffs, justice requires that leave to amend the complaint be given.

IT IS HEREBY, ORDERED, ADJUDGED AND DECREED that:

1. Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 9) is **GRANTED**. Plaintiffs are directed to file their Amended Complaint.

2. Defendant Bittner & Hahs, PC's Motion To Dismiss [Plaintiffs' original Complaint) For Failure to State a Claim (ECF No. 5) is **DENIED** as **MOOT**.

3. Plaintiffs' Motion for Leave to File Excess Pages (ECF No. 17) is
GRANTED.

IT IS SO ORDERED. The District Executive is directed to enter this order and forward copies to counsel.

DATED this 19th day of August, 2011.

s/Lonny R. Suko

LONNY R. SUKO
United States District Judge

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